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SERVICE DATE - JUNE 29, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-20920

NORTH AMERICAN VAN LINES, INC. AND THE FORTRESS CORPORATION
D/B/A FORTRESS FAE WORLDWIDE--POOLING AGREEMENT

Decided: June 23, 1998

On April 2, 1998, North American Van Lines, Inc. (NAVL), of Fort Wayne, IN, and The Fortress Corporation, d/b/a Fortress FAE Worldwide (Fortress FAE), of Boston, MA, both motor common and contract carriers of property, filed an application, in accordance with the regulations at 49 CFR 1184, seeking authority to pool their services, traffic, and revenues, pursuant to 49 U.S.C. 14302.

BACKGROUND

NAVL holds common and contract carrier operating authority in Docket No. MC-107012 and various subnumbers to transport: (1) general commodities (except household goods and classes A and B explosives) and (2) household goods,¹ between points in the United States. Insofar as its general commodities authority is concerned, NAVL is principally engaged in providing long-distance line haul transportation of less-than-truckload (LTL) shipments of high value products other than fine art. Through its High Value Products division, NAVL provides specialized transportation and logistics services including, without limitation, transportation and distribution of computers, medical equipment, exhibits and displays, and art work.

Fortress FAE holds common and contract carrier operating authority in Docket No. MC-144109 (C) and (P) to transport property (except household goods) between points in the United States.² Fortress FAE is a provider of specialized transportation and related services for art work, which includes packing, unpacking, installation, crating, storage in transit, related handling services, and local delivery, as well as actual movement. Fortress FAE markets its specialized services primarily to museums, galleries, and collectors.

¹ NAVL's contract carrier authority excludes hazardous materials from household goods movements.

² Fortress FAE also holds a broker license to arrange for transportation of freight (except household goods), between points in the United States.

Under the proposed agreement,³ applicants will pool shipments, at and between points in the United States, consisting of items commonly found in museums, as well as museum exhibits, museum pieces, fine art work and antiques.⁴ Applicants state that there will be a division of traffic, services and earnings. Specifically, pursuant to the agreement: (1) NAVL will provide dedicated routes between the parties' terminals; (2) NAVL will provide line haul transportation services, and the line haul segment of each shipment will be transported on NAVL's equipment under its interstate/intrastate authority; (3) Fortress FAE will provide origin and destination transportation and specialized origin and destination services with its equipment under its interstate/intrastate authority; (4) NAVL will be the exclusive provider to Fortress FAE of all line haul transportation that Fortress FAE either does not handle with its own equipment or that is not otherwise specifically directed to another carrier by Fortress FAE's customers; and (5) Fortress FAE will be the exclusive provider to NAVL of all LTL shipments that are not otherwise specifically directed by NAVL's customers or agents to another carrier.

Applicants indicate that they jointly will present shippers with a total transportation package, which may include packing, crating, storage in transit, line haul movement, local delivery, unpacking, and uncrating. According to applicants, joint training will be conducted for all personnel and they may engage in joint sales efforts. The applicants say that by combining Fortress FAE's particular expertise in the fine art transportation market, and NAVL's extensive network of agents, drivers, equipment, and years of experience with the careful handling of high value products, the pooled operation will provide fine art shippers with an integrated, smoothly functioning transportation service encompassing all aspects of a fine art move. Applicants also anticipate that there will be additional situations in which the parties can work together to achieve a better result for their respective customers. Such situations could include, without limitation: (1) providing relocation services to customers, with Fortress FAE providing the specialized handling required for art work and NAVL providing the additional packing, handling and transportation services for the relocation; (2) expanding into international transportation of art work; (3) providing a unified service to corporations and art museums for the relocation of their art collections, furniture, libraries and offices; and (4) providing climate controlled storage.

Applicants claim that, for this venture to function properly, they must pool and divide traffic, services, and earnings. Applicants state that they have the operating authority to provide transportation services for the movement of fine art and that, in accordance with the standards stated by the Board's predecessor, the Interstate Commerce Commission, in Consolidated Freightways Corp. of Del., Pooling, 109 M.C.C. 596 (1975), their anticipated joint operation would be pooling.

³ The term of the agreement is for a 1-year period which shall continue for additional 1-year periods thereafter unless terminated by either party. The effective date of the agreement is 15 days after the Board issues an order approving the application, but no sooner than 50 days after filing.

⁴ Applicants state that the commodities involved are general commodities.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14302, the Board must determine whether the proposed pool is of major transportation importance and whether there is a substantial likelihood that the agreement will unreasonably restrain competition. If we determine that neither of these two factors exists, we are required to approve the agreement without a hearing. We conclude, on the basis of the record presented, that neither factor is present and that the proposal should, therefore, be approved without a hearing.

We find that the proposed transaction is not of major transportation importance. Only two carriers—NAVL and Fortress FAE—will participate. Moreover, the volume of traffic affected will be an extremely small percentage of all general commodities motor carrier traffic. Finally, there are many other transportation entities providing these services and, as such, the parties' agreement will not materially alter the competitive environment.

We also find that the agreement will not unreasonably restrain competition. The record indicates that there is substantial competition from a large number of motor carriers, freight forwarders and brokers that can serve this market. Moreover, the pooling arrangement will not restrict others from providing similar services. Rather, we believe that the agreement will have a positive competitive impact as it will enable applicants to achieve economy of operation and to offer an efficient, complete transportation service to the benefit of shippers of fine art.

Finally, we will retain continuing jurisdiction to require submission of additional information should we find it necessary in the future. If we find at any time that the transaction has become a major one, we retain the power to suspend operation of all or part of the pool during the pendency of a public hearing concerning the criteria set forth in 49 U.S.C. 14302(b)(3) and to impose such terms and conditions, if any, as are just and reasonable.

We find:

The proposal is not of major transportation significance and will not unduly restrain competition and, therefore, must be approved without a hearing. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The pooling of services by North American Van Lines, Inc. and The Fortress Corporation, d/b/a Fortress FAE Worldwide, is approved and authorized.
2. The Board reserves the right to require submission of additional information, to investigate the transportation significance of this proposal, and to prescribe such terms and

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conditions as are necessary to ensure compliance with the terms of this decision and applicable regulations.

3. This decision will be effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary